

LABOUR DEPARTMENT

The 27th July, 1984

No. 9/5/80-4Lab/4548.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Delhi Pulp Industries, Plot No. 51, NIT, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL HARYANA,
FARIDABAD

Reference No. 296 of 1982

between

SHRI ISHRAIL KHAN AND THE MANAGEMENT OF M/S DELHI PULP INDUSTRIES, PLOT NO. 51,
NIT, FARIDABAD

Present—Shri Amar Singh Sharma, for the workman.

Shri K.P. Aggarwal, for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Ishrail Khan, workman and the management of M/s Delhi Pulp Industries, Plot No. 51, NIT, Faridabad, to this Tribunal, for adjudication:—

Whether the termination of service of Shri Ishrail Khan was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. The claimant in the claim statement dated 7th September, 1982, alleged that he was employed with the respondent management on 22nd December, 1978, as a Watchman on a permanent post and was getting Rs. 340 per month. It was then alleged that termination of his service was illegal and wrongful because he demanded overtime wages at the double rate, while he was being paid overtime at the single rate. It was further alleged that no charge-sheet was issued to him nor any domestic enquiry was held before terminating his service and he had been victimised. It was, therefore, prayed that he be reinstated with full backwages.

3. The management in their written statement dated 3rd November, 1982, pleaded that the claimant showed gross negligence in discharging of duty on 8th May, 1982, when Shri Mai Chand Gupta called him and reprimanded him verbally. It was then pleaded that the claimant had absented himself from duty with effect from 9th May, 1982 and he came to the factory on 15th May, 1982, for his total dues. He took Rs. 736.07 in full and final settlement of his claim and executed documents in that respect.

4. The claimant in rejoinder dated 3rd December, 1982, averred the same pleas taken in the written statement. He specifically stated that he never remained absent nor he took amount of Rs. 736.07 from the management.

5. On the pleadings of the parties, the following issues are framed by my learned predecessor on 27th December, 1982:—

(1) Whether the workman absented himself from duty and took his full and final account? If so, to what effect? OPM

(2) Whether the termination of service of Shri Ishrail Khan was justified and in order? If not, to what relief is he entitled? OPM

6. It may be mentioned that the management examined one witness and documents Exhibit M-1 to M-9 have been tendered into evidence. The workman appeared in the witness box. After going through the entire evidence and hearing both the sides, my findings on the above issues are as under:—

Issue No. 1:

7. The management has examined MW-1 Shri Mai Chand Gupta, Time office in charge, who stated that the claimant was employed as Chowkidar in the respondent factory and that Ex. M-1 was the letter signed by the claimant. He further stated that on 8th May, 1982, the lock of the cash box lying in the office was found broken, due to which he reprimanded the claimant when he stated that he would not like to serve in the factory

and that his account be settled. He further stated that the claimant remained absent with effect from 9th May, 1982 and demanded his account on 15th May, 1982 and that the amount was paid to him,—vide vouchers Ex.M-2 to M-6 by the cashier in his presence and that the claimant signed in full and final receipt Ex M-7. He further stated that Ex. M-8 was the conciliation report and that the claimant used to sign the attendance register Ex. M-9.

8. Shri Ishrail Khan claimant has appeared as WW-1 and stated that he was employed as Watchman in the factory on 22nd December, 1978 at Rs. 340 per month. He further stated that he was turned out from the factory on 15th May, 1982. He further stated that he demanded overtime allowance at double rate because he was being paid the said allowance at single rates, due to which the management was annoyed and turned him out. He also stated that no charge-sheet was served on him and that he did not affix his signature on documents Ex. M-2 to M-7.

9. A perusal of the above evidence would show that MW-1 Shri Mai Chand, Time Office Incharge has deposed that the claimant asked them to settle his account and that the amount was paid to him on the basis of documents Ex. M-1 to M-7. The claimant specifically denied his signature on these documents in the rejoinder and also in the witness box. Firstly, the testimony of Shri Mai Chand, Time Office Incharge does not find corroboration from any other witness. The cashier of the management has not been examined by the management in this respect. It was alleged that the amount was paid by the cashier but the said cashier has not come forward to depose in this respect. Secondly MW-1 Shri Mai Chand Gupta stated that the lock of the cash box was found broken on 8th May, 1982, but in cross-examination he stated that the claimant was not charge-sheeted nor any report was made to the police because no amount was found short in the cash box. The document, Ex. M-1, shows that the claimant himself made a report to the management on 8th May, 1982, to the effect that he found the lock broken. Consequently the claimant himself brought this fact to the notice of the management. The management did not take any action because no amount was stolen. Under these circumstances the claimant cannot be condemned because the management did not hold any enquiry regarding the persons who had committed the mischief. Thirdly, the claimant specifically denied that he did not receive any amount on the basis of the alleged documents Ex. M-2 to M-7 and that the same did not bear his signatures. No expert was examined by the management to show that the signatures on these documents tallied with the sample signature of the claimant. Fourthly, the claimant had taken the plea that he demanded overtime allowance at double rate whereas he was being paid this allowance at single rate and due to this grudge, the management felt annoyed and turned him out of the factory. The claimant was in service since 22nd December, 1978 and if wanted to settle his account and leave the job voluntarily, he must have filed some application. MW-1 Shri Mai Chand Gupta, stated in cross-examination that the claimant demanded the account verbally. When the claimant appeared in the witness box he was confronted with the document, mark MX. He stated that he did not affix his signatures on this document. This document was not proved in their evidence. On the other hand it was their case at that time that oral request was made by the claimant to settle his account. Consequently, the document, mark MX, the execution of which has been denied by the claimant cannot be called a genuine document. Fifthly, the claimant clearly stated that he never remained absent from duty. If he had remained absent from 9th May, 1982 to 15th May, 1982, some action would have been taken by the management against the claimant and his explanation would have been called. This circumstance also shows that the claimant never remained absent from duty. The ruling reported as **Andhra Laundry (Proprietor, R. A. Masilaman) Madras vs. Additional Labour Court, Madras and others, 1968-LLJ-356**, lays down that where the workmen received amounts in full and final settlement of their claim and passed individual receipt, they were estopped from putting forth a claim for the statutory benefits. The management after placed reliance on the ruling reported as **Management of Northern India Theatres vs. Presiding Officer, Labour Court, Delhi and another 1975, 1-LLJ-235**, in which it is laid down that the settlement covered all claims of workman whatsoever and did not leave any scope for any future dispute of claim to arise. Both these rulings are distinguishable on facts because in the present case alleged settlement has not been proved. Consequently the management has failed to prove that the workman absented himself and took his full and final accounts on 15th May, 1982. The issue is decided accordingly against the management.

Issue No. 2.

10. The plea taken by the management that the workman left the job of his own accord and settled his account, has not been believed for the reasons given in issue No. 1 above. The provision of section 25-F of the Industrial Disputes Act, 1947, regarding retrenchment have not been followed by the management and as such the termination of service of the claimant was not justified and in order.

11. The representative of the management argued that the workman when appeared as WW-1, stated that he was pulling rickshaw and as such he was gainfully employed. The claimant was working as Chowkidar and after termination of his service if he was pulling rickshaw to earn some amount, it cannot be held that he was gainfully employed because if the workman had remained idle he would have died of starvation. The ruling relied upon by the management reported as **Hindustan Machine Tools versus State of Haryana and others, 1975-II-LLJ-195**, is distinguishable on facts because in that case the claimant was a Medical Officer and it had come in evidence that after terminating his service, he was running a clinic. In that case, the Doctor was gainfully employed because he took the job of Doctor after his services were terminated. This ruling, therefore, does not help the management.

12. It was also argued that the conduct of the workman was such that he did not deserve reinstatement and in any case be given compensation. Reliance was placed by the management on the rulings reported as *M/s Francis Klein and Co. (P) Ltd. and Their workmen and another*, 1971-II-LLJ-615. In that case the claimant was given compensation of Rs. 5,000 for termination of service on account of loss of confidence. Second ruling is reported as *Sri Rama Vilas Service Ltd., Kumbakoram versus The Presiding Officer, Labour Court, Madras and another*, 1971-I-LLJ-464. In that case, two drivers of the company were so discharging their duties that it was not possible for 144 conductors of the Company to work with them and they were kept in office for nine months, but there was no improvement in their behaviour and as such it was held that their reinstatement was not justified. Both these rulings are distinguishable on facts because in the present case, no misconduct on the part of the claimant has been proved because the management did not hold any enquiry nor the matter was reported to the police on the ground that amount was not found short. The report Exhibit M-I was also made by the claimant and he brought this fact to the notice of the management. Consequently the claimant cannot be condemned for an act regarding which no action was taken by the management and no enquiry was held as to who had committed the mischief.

13. In view of the above discussion, it is held that termination of service of the claimant was not justified and in order and consequently, he is entitled to reinstatement with full back wages. The award is passed accordingly.

Dated the 28th June, 1984

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 502, dated the 28th June, 1984.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6Lab/4549.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Joy-B Industries, Plot No. 162, Sector 24, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 143/1982

between

SHRI JAGAN NATH, WORKMAN AND THE MANAGEMENT OF M/S JOY-B INDUSTRIES, PLOT NO. 162, SECTOR 24, FARIDABAD

Present —

Shri C. L. Oberai, for the workman.

Shri R. C. Sharma, for the management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Jagan Nath, workman and the management of M/s Joy-B Industries, Plot No. 162, Sector 24, Faridabad, to this Tribunal, for adjudication :—

Whether the termination of service of Shri Jagan Nath was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. The claimant, in his claim statement, dated 14th May, 1982, alleged that he was the permanent employee of the management and was working for the last 5 years and was drawing Rs. 425 per month. It was then alleged that wrong and fabricated charges were framed against the workman with the help of the Union of the management which was siding with the management.

and that in domestic enquiry no adequate opportunity was given to the claimant to cross-examine the witness and produce defence evidence. It was then alleged that the Manager had no authority to sign the charge-sheet or dismissal order and that the Enquiry Officer was paid lawyer of the Management, who was not an independent person to conduct the domestic enquiry and further that the enquiry was conducted jointly with Shri Ashok Singh without any written consent of the claimant. It was then alleged that the order of dismissal of the applicant was illegal and in violation of the principles of the Standing Orders. It was, therefore, prayed that the impugned order be set aside.

3. The management in their written statement, dated 17th July, 1982, pleaded that the enquiry proceedings were held according to the Standing Orders and that the claimant cross-examined the witnesses. It was also pleaded that the enquiry was not vitiated merely because the enquiry officer was paid adviser of the Management. It was pleaded that the Managers was competent to sign the documents. It was further pleaded that no objection was raised by the claimant regarding holding of joint enquiry.

4. The claimant in his rejoinder, dated 6th August, 1982, reiterated the plea taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed :—

(1) Whether the enquiry is fair and proper ? (OPM).

(2) Whether the termination of service of Shri Jagan Nath was justified and in order ? If not, to what relief is he entitled ? (OPM).

6. It may be mentioned that the Management has examined two witnesses and Documents Exhibit M-1 to M-5, and Exhibit MW-2/1 to MW-2/9 have been tendered into evidence. The workman has appeared in the witness box and documents Exhibit M-1 to W-4 have been tendered into evidence. After going through evidence and hearing both the sides, my findings on the above issues are as under :—

7. **Issue No. 1.**—The management has examined Shri Satish Ahuja as MW-1, who stated that the charge-sheets Exhibit M-1 and M-2 were framed against Shri Jagan Nath and Shri Ashok Singh and that he was appointed as Enquiry Officer by the Management.—*vide* letter Exhibit M-3 and Exhibit M-4 were the proceedings held by him. He further stated that both the parties appeared before him and joined the enquiry proceedings. He also stated that the claimant cross-examined all the witnesses produced by the Management and that he permitted the claimant to bring Shri B. M. Gupta, Union Leader to represent his case, but the claimant did not bring him of his own accord. He further stated that the claimant wanted certain facilities,—*vide* letters Exhibit M-5 and M-6 and that he sent the reply to the same,—*vide* letter Exhibit M-7. He further stated that the documents Exhibit M-8 to M-13 were produced during the enquiry and that the letter Exhibit M-14 was given by the workman. He further stated that he submitted his report Exhibit M-15 and that Shri Subhash Chander was the Factory Manager. MW-2 Shri Subhash Chander, stated that he was Manager of the Management factory and that Exhibit MW-2/1 to MW-2/2 were forms No. 2 of the factory while Exhibit MW-2/3 was the returns and these documents were signed by him. He further stated the claimant and Shri Ashok Singh were charge-sheeted and that the notices regarding holding of the enquiry were issued by him. He further stated that the documents Exhibit MW-2/4 to MW-2/5 were show cause notices issued by him and that Exhibit MW-2/6 and MW 2/7 were the replies. No further stated that Exhibit MW-2/8 and MW-2/9 were the dismissal orders.

8. Shri Jagan Nath workman appeared as WW-1 and stated that he was working as helper and was drawing Rs. 425 per month. He then stated that he sent reply to the charge-sheet,—*vide* document Exhibit W-1. He then stated that the enquiry was held and that the notice regarding the said enquiry was Exhibit W-2. He further stated that he demanded certain facilities,—*vide* letter Exhibit M/3. He also stated that Shri Ashok Singh was chargesheeted along with him,—*vide* document Exhibit W-4. He further stated that he took the plea that the enquiry should be held separately but it was held jointly by the Enquiry Officer forcibly. He also stated that he was not permitted to bring the representative of management union during his enquiry and that the Enquiry Officer was paid lawyer of the Management and that he was not given the opportunity to cross-examine the witnesses.

9. A perusal of the oral and documentary evidence mentioned above would show that Shri Jagan Nath claimant was chargesheeted,—*vide* chargesheet Exhibit M-1 and Shri Ashok Singh was chargesheeted,—*vide* charge-sheet Exhibit M-2. Exhibit M-8 is the reply given by the claimant to the said chargesheet and Exhibit M-9 is the reply given by Shri Ashok Singh in that respect. Exhibit M-3 is the letter written by the management, dated 25th November, 1981 by which the claimant as well as Shri Ashok Singh were informed that Shri Satish Ahuja was appointed as Enquiry Officer and that the enquiry would be held on 22nd November, 1981 at 10.00 A.M. in the office of the factory premises. Exhibit M-4 are the proceeding held by the Enquiry Officer while Exhibit M-15 is the report of the Enquiry Officer. MW-1 Shri Satish Ahuja stated that both the parties participated in the enquiry proceedings and that the witnesses produced by the Management were cross-examined by the claimant. The Enquiry proceedings Exhibit M-4 show that the enquiry took place on the complaint of Shri Siri Narain, who appeared as MW-4. In the enquiry proceedings his version was corroborated by MW-5 Shri Machai and MW-6 Shri Ram Charan. The Enquiry Officer in his report Exhibit M-5 has mentioned that in the chargesheet,

it was alleged that on 12th November, 1981 Shri Ashok Singh was on duty in night shift, but was sleeping and Shri Narain woke him up when Shri Ashok Singh quarrelled with Shri Narain and gave beating to him causing him injury on his left ear and further that the claimant caught hold of Shri Narain and got him beaten from Shri Ashok Singh. The claimant examined 10 witnesses in his defence, WW-1 to WW-10, before the Enquiry Officer who deposed that no such incident took place. The Enquiry Officer in his report Exhibit M-5 considered all the evidence and found that charges against the workman stood proved. After issuing show cause notice to the claimant Exhibit MW-2/4 and obtaining his reply Exhibit MW-2/6, the claimant was dismissed,—*vide* letter Exhibit MW-2/3, dated the 6th January, 1982. The Enquiry proceedings Exhibit M-4 clearly show that the claimant cross-examined all the witnesses produced by the Management and himself produced 10 witnesses in his defence. The testimony of MW-1 Shri Satish Ahuja and MW-2 Shri Subhash Sood, Manager and the document produced by the Management as mentioned above, therefore go to prove that the enquiry held against the workman fair and proper.

10. The plea taken by Shri Jagan Nath (WW-1) to the effect that he was not permitted to bring the representative of the union to represent him in the enquiry is without any basis because in the enquiry proceedings Exhibit M-4, it is clearly mentioned that the claimant was asked to bring Shri B. M. Gupta Office bearer of the Union but the claimant stated on 6th December, 1981 that he had not brought Shri B. M. Gupta and that he would himself conducted the enquiry. The Enquiry Officer MW-1 Shri Satish Ahuja made a similar statement when he appeared in the witness box. Consequently the claimant was permitted to bring Shri B. M. Gupta but he did not do so.

11. Another plea taken by the workman to the effect that the Enquiry was held jointly against him and Shri Ashok Singh against his wishes is without any force because in the enquiry proceedings Exhibit M-4, it is clearly mentioned that on 6th December, 1981 the claimant as well as Shri Ashok Singh stated that they had no objection if enquiry was held jointly moreover, the allegations against the claimant and Shri Ashok Singh arose out of the same transaction and as such joint enquiry had to be held because the witnesses were the same.

12. As regards the plea taken by the workman that Shri Satish Ahuja was not an Independent Enquiry Officer, the same is without any force. Merely because he was paid lawyer of the Management is no ground to hold that he was not an independent Enquiry Officer, but on other hand, he was fully acquainted with the procedure laid down for holding the enquiry. He gave full opportunity to both the sides to lead evidence and then give his report.

13. As regards the plea taken by the workman that Shri Subhash Chand, Manager (MW-2) was not competent to sign the documents the same is without any force because the Manager of the factory is competent to sign these documents and no provision has been shown by the claimant to prove that the Manager was not competent to sign the documents.

14. In view of above discussion, it is held that the enquiry was fair and proper. The issue is decided in favour of the Management.

Issue No. 2 :

15. The claimant has been dismissed *vide* order dated the 6th January, 1982 (Exhibit MW-2/9) and the allegation against him were that he assisted Shri Ashok Singh in the quarrel with Shri Narain and caught hold of Shri Narain, when he was being beaten by Shri Ashok Singh. The evidence in the enquiry is that the dispute arose between Shri Ashok Singh and Shri Narain when Shri Narain woke him up and that Shri Ashok Singh abused Shri Narain and gave a beating to Shri Narain, who received injury on the left ear. MW-4 appeared before the Enquiry Officer and stated that Shri Jagan Nath claimant had caught hold of him. It will thus be seen that the offence committed by Shri Ashok Singh was of a serious nature because he abused Shri Narain and gave the beating to him. The part played by Shri Jagan Nath is that he caught hold of Shri Narain. The claimant, therefore, did not give any beating to Shri Narain nor abusive language was used by him. The quarrel took place between Shri Ashok Singh and Shri Narain and not the claimant. Under these circumstances the punishment of dismissal from service awarded to Shri Jagan Nath complainant is a severe one because the conduct of Shri Ashok Singh justified his dismissal from service because he gave a beating to Shri Narain and abused him while the role assigned to Shri Jagan Nath claimant to the effect that he caught hold of Shri Narain does not justify his dismissal from service.

16. Under these circumstances, the impugned order, dismissing Shri Jagan Nath cannot be upheld. Consequently, the claimant Shri Jagan Nath deserves reinstatement but is not entitled to back wages on account of the part played by him in the above incident. The award is passed accordingly.

Dated the 23rd June, 1984.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana
Faridabad.

Endorsement No. 501, dated the 28th June, 1984

Forwarded, (four copies,) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana
Faridabad.